



Government of Bermuda
Department of Telecommunications

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Date: 07 December 2006

The Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554
United States of America

In the matter of **IB Docket No. 06-160**

Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service, and the Feasibility of Reduced Orbital Spacing for Provision of Direct Broadcast Satellite Services in the United States.

Introduction

The Department of Telecommunications of the Government of Bermuda's Ministry of the Environment, Telecommunications and E-Commerce welcomes the opportunity to offer its comments¹ on the Commission's proposals. For many years, Bermuda and the United States have enjoyed good trading relations and have been able to co-operate on matters of mutual economic and commercial concern. Bermuda is one of a number of small countries which are Overseas Territories of the United Kingdom, and which are located within the International Telecommunication Union (ITU)'s Region 2. In recent years, a number of satellite operators have established themselves in Bermuda, and in addition, Bermuda itself is the beneficiary of a number of allotments in the ITU's Plans, as described in Appendices 30, 30A and 30B of the Radio Regulations. One of these allotments, at 96.2° West longitude, forms the basis of a filing deposited with the ITU. That filing is intended to facilitate the successful exploitation of the original allotment.

Processing Procedures

This Department agrees with the Commission's proposal to include these services in the licensing framework created by the First Space Station Reform Order. Although DTH FSS and DBS have sufficient in common for them to be regarded as functionally equivalent from the point of view of the consumer, the separate definitions in the Commission's Rules are largely based upon the fact that DTH FSS tends to use spectrum which is not internationally planned, whereas DBS does tend to use spectrum which is internationally planned. DBS services therefore must take priority over later unplanned services which may use the same, planned, spectrum. This priority must also be extended to ensure the protection of allotments in the ITU's Plans and assignments in the Lists, and this must include feeder links to those services.

¹ This letter describes the comments and observations of this Department, and we do not try to represent the view of the Ministry of the Environment Telecommunications and E-Commerce, or the Government of Bermuda as a whole, nor the collective or individual view of those satellite operators who are incorporated in Bermuda.

All satellite services should be subject to the same licensing framework, and so DBS services should be included in the framework created by the First Space Station Reform Order, and regarded as a "GSO-like" service. The *Northpoint* decision also supports the adoption of licensing procedures according to that framework. We also believe that satellite services should be presumed to be "international" in character, due to the notification and co-ordination procedures of the ITU, and in recognition of the fact that most satellite systems are at their most efficient when deployed to serve as many territories as possible.

Whilst we recognise that the *Northpoint* decision confirms that the Commission cannot award DBS licences by auction, we do not believe that as a general principle, the notion of "competitive bidding" should be restricted to cash auctions, and we believe that other competitive or comparative selection processes, such as the "beauty contest", could be used in some circumstances as a means of furthering the public policy objectives of Administrations.

Although DBS services using the 12 GHz band are subject to planning in Appendix 30 of the Radio Regulations, the market should be allowed to determine their allocation. We believe that the "first come, first served" principle is the most effective and efficient way of achieving this, provided that satellite operators are allowed to negotiate between themselves technical and commercial solutions to the problems of sharing, and there are appropriate regulatory safeguards to prevent undue speculation and spectrum "warehousing".

Non-Nine-Degree Orbital Spacing

The Commission's orbital spacing policy has been to accommodate the largest number of satellites in an environment that minimises harmful interference. In the interests of competition and consumer choice, we support this policy. Whilst we recognise the historical technical reasons for minimum separation, we believe that the similarities between DBS and DTH FSS mean that similar orbital separation rules should apply. However, this would be inconsistent with the Commission's current requirement of 9° separation between DBS satellites, and we suggest that the Commission should relax its requirement for 9° separation between DBS satellites.

The Commission notes that it initially derived its 9° separation requirement from the separation between U.S. allotments in the ITU's Plan. However, this fails to take into account the fact that other countries also have allotments in the Plans, as the Commission notes, and the separation between allotments is not uniform. The co-location of allotments can be "nominal" co-location, and cross-polar, adjacent, overlapping channels can be co-located. Therefore, under appropriate technical conditions, orbital separations of far less than 9° should be allowed.

As Bermuda has an allotment in the Region 2 Plan, and has deposited a filing at the ITU which is intended to promote this allotment, this Department must declare its interest in these proceedings. It is our belief that the Commission's current 9° separation requirement is as unsuitable for DBS services as it would be for DTH FSS and other unplanned services. The Commission should, therefore, remove the minimum orbital separation requirement from all services, including DBS services, and should allow operators, both U.S. operators and non-U.S. operators, full freedom to use the procedures in the Radio Regulations to co-ordinate their proposed services with existing services and with planned allotments. By adopting this policy, the Commission will not need to adopt an orbital spacing plan, or other policies necessary to achieve a balance between the various technical and economic considerations in the provision of satellite services, and we are confident that this will not lead to an unmanageable increase in capacity (and corresponding drop in unit value), provided that international procedures are followed to grant priority to existing services and planned assignments, and that there are adequate safeguards in place against speculation.

In the NPRM, the Commission notes that it has received a number of petitions to allow separation of less than 9° between DBS satellites. We note also the Commission's assertion that it believes that it has the residual jurisdiction to consider these petitions before the conclusion of this rulemaking process. In that context, the Commission granted two of those applications on 29th November, submitted by Spectrum Five and by SES-Americom.

We support the decision of the Commission to grant both of those applications, and we fully support the reasons given by the Commission for their decision. However, we note that the action appears to validate the approach of making new applications before a proposed rulemaking has been concluded. We invite the Commission, therefore, to clarify the procedures that will be followed in such cases, to ensure transparency and equitable treatment of all potential applicants.

Streamlined Processes and Safeguards Against Speculation

This Department believes that all satellite applications should be subject to the same transparent and clearly-defined procedures. We support the ITU's policy of discouraging "paper satellites", and encourage any measure taken in support of this policy. We believe that it is the duty of each Administration to find the balance between reasonable commercial adventure, and undue speculation or "warehousing", and, having due regard to that balance, it is the right of each Administration to establish its own mechanisms to support that policy.

Operator-to-Operator Discussions, and Impasses

This Department shares the view of the Commission, indeed of all responsible Administrations, that the filing of "paper satellites" should be discouraged. However, we disagree that all satellite network proposals should be domestically co-ordinated before the Administration makes the filing. A requirement such as this may be impossible to fulfil, and the delay to filing caused by this requirement means that otherwise viable and credible proposals would enter the international co-ordination process with a lower degree of date-priority than if they had been filed immediately. This Department believes that credible and viable filings, as demonstrated by suitable supporting evidence, should be deposited with the ITU as soon as is practically possible. The ITU's co-ordination procedures are suitable for almost all applications, and that filings should be made as soon as possible.

Licence Terms

We appreciate the reasoning of the Commission that the Commission's Rules only permit the Commission to license broadcasting facilities for a maximum of eight years, however, we note that the procedures described in the Radio Regulations allow BSS systems added to the List to remain on the List for 15 years, and that this can be extended. Further, most commercial satellites being planned or built today are intended for a service life-expectancy of longer than eight years. We believe that in the interests of clarity and certainty, it would be preferable if the Commission were to adopt licensing rules which reflected international regulatory norms.

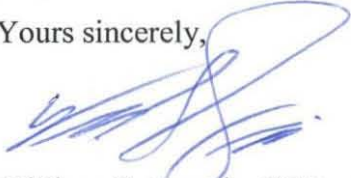
The Department suggests that, with regard to the constraints which the Commission finds placed upon it by its own Rules, the Commission explore the possibility of amending the terms of its satellite licences so that those provisions which govern the operation of the satellite come into effect on a date co-incident with the bringing into use of the space station.

Sharing with Other Services

This Department believes that unless particular services are subject to international planning or prioritisation, or there are significant public policy objectives to be served by regulatory intervention, then the conditions for sharing between services should be determined by technical and commercial agreements reached between the operators of those services.

The Department of Telecommunications has no further comments on this Notice of Proposed Rule-Making, and I would like to thank the Commission for the opportunity to comment on these proposals.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'William G. Francis', written over a horizontal line.

William G. Francis, CCP
Director of Telecommunications
